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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 David E. Wattel, et al.,) No. 02-CV-2256-PHX-PGR
10 Plaintiffs,)
11 vs.)
12 Stephen Browne, et al.,) **ORDER**
13 Defendants.)
14)
15)

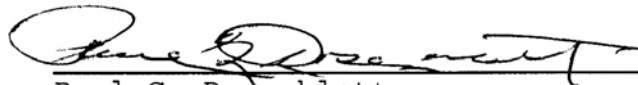
16 Pending before the Court is Defendant G. Dennis O'Brien's Motion to Strike Plaintiffs'
17 Expert Designation and Testimony (Doc. 175). On November 18, 2005, the Plaintiffs
18 disclosed their expert, Cary D. Ferchill, and his report on corporate governance standards.
19 Defendant O'Brien filed the present motion one month later arguing that Mr. Ferchill should
20 not be allowed to opine on the appropriate legal standard in this case or whether or not the
21 Defendants' conduct breached that suggested legal standard. According to Defendant
22 O'Brien, neither of these subjects is appropriate for expert testimony under Federal Rule of
23 Evidence 702. Specifically, Defendant O'Brien contends that Mr. Ferchill's opinions are in
24 admissible legal conclusions. The Court disagrees.

25 Federal Rule of Evidence 702 provides for the liberal admission of expert testimony
26 regarding factual matters. Expert testimony is admissible when it will assist the tier of fact
27 in understanding the evidence or determining a disputed issue of fact. As correctly noted by
28 the Plaintiffs, the Court will instruct the jury regarding the legal duties the Defendants owed

1 to Marketlift. Accordingly, the Defendants may be liable for damages if the jury determines
2 they breached those legal duties. However, the standards of care that make up those duties
3 and what conduct constitutes a breach of those duties are factual questions and proper
4 subjects for expert testimony. As long as the expert's testimony assists the trier of fact in
5 understanding the evidence or determining disputed issues of fact, it will be admitted per
6 Rule 702. Therefore,

7 IT IS ORDERED that Defendant O'Brien's Motion to Strike Plaintiffs' Expert
8 Designation and Testimony (Doc. 175) is DENIED.

9 DATED this 3rd day of May, 2006.

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12 Paul G. Rosenblatt
13 United States District Judge
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